

Remarks/Arguments

This response is to the Office Action dated September 25, 2006.

Claims 2, 5-8 and 10 remain in this application. Claim 1 has been canceled.

Claims 2, 5-7 and 10 have been rejected under 35 USC 102(b) in view of GB 2,302,042 A.

Applicants disagree.

The present invention requires a thermoplastic elastomer as a gasket formed through the thickness of a screen and having a thickness greater than the screen through which it is formed.

The reference fails to teach each and every element of the present invention and as such is not an anticipatory reference. In particular, the reference fails to teach the use of a thermoplastic elastomer that is formed through the thickness of the screen and which has a thickness greater than that of the screen through which it is formed.

The reference clearly teaches that the EVA copolymer is placed "between" the layers not through the screen layers. See GB 2302042, Abstract, line 3, "positioned between the elements"; Page 1 third paragraph "between the filtration medium and support material"; Page 2, line 9, "positioned between the structural elements" and line 35 "between"; Page 4, lines 27-28 "positioned between the filtration media"; Page 5, lines 1-2 "between the filtration media"; Page 6, lines 16-17 "between the support materials"; line 34 "positioned between the membrane"; Page 7 lines 12-13 "positioned between the membrane and the support material"; and claim 1 line 5 "positioned between said structural elements".

The only statement it has to embedding the copolymer layer is at pages Page 6, line 27 and page 7, lines 17-19 in which an additional diffusion layer between the membrane and support layer

may preferably be "partially embedded in the copolymer positioned between the membrane and the support material." (Applicants emphasis).

Contrary to the statement made in the Office Action, it is clear that the reference fails to teach the gasket material extending through any layer, never mind the claimed screen as is required by the present claims. At best, it states that at best a middle layer can be partially embedded into the copolymer layer that is between the filter and support layers.

Additionally, it is clear that the copolymer layer of the reference does not extend beyond the thickness of the layer through which it must extend as is required by the present claims. Contrary to the assertion in the Office Action, none of the cited portions of the reference teach "...seals extending at least 0.001, 0.002, or 0.005 from the surfaces of the screens....".

The abstract cited for support of this proposition only states: "A filtration device comprises at least two constructional elements which are mated together to form an edge, and is characterised in that at least a part of the said edge is fluid tight sealed with an ethylene-vinyl acetate copolymer positioned between the elements." (Applicants emphasis). Nowhere is there support for the assertion that the reference teaches "...seals extending at least 0.001, 0.002, or 0.005 from the surfaces of the screens..." in that cited passage.

Likewise , the third paragraph of page 1 cited for support of this proposition only states: " a variety of sealant and gasket materials have been used **between** the filtration medium and support material of a supported filtration medium assembly, as well as **between** adjacent support materials of back - to - back supported filtration medium assemblies, so as to control fluid flow and prevent leakage. Such materials include polyurethane which can provide fluid-tight seals but suffers from high extractables which can contaminate the fluid being filtered. Other materials with low extractables,

such as polyethylene, however, can be brittle and can have little compliance, thereby allowing for fluid leakage pathways, particularly in filtration devices with motive means, such as dynamic filtration devices." (Applicants emphasis added). Nowhere is there support for the assertion that the reference teaches "...seals extending at least 0.001, 0.002, or 0.005 from the surfaces of the screens...." in that cited passage.

Likewise the cited sections at Page 2, Page 3 and Page 7 are silent both on the material extending through the layer as well as any thickness extending beyond it. To the contrary the only thing they teach is that the copolymer is between adjacent layers to form a gasket.

The office action also makes the statement that the copolymer is heat sealed and penetrates several layers, yet provides no citation to support this assertion and Applicants see none. They specifically ask that the examiner provide them with the citation upon which the examiner has relied for this assertion. While the material is described as having a lower melting point than the other materials, there is no teaching or suggestion that it in fact heat melted. To the contrary, at Page 7, line 35 to Page 8, line 7, the reference discusses the "excellent adhesion and compliance characteristics" of the copolymer. One of ordinary skill in the art would conclude that adhesion is the mechanism for attachment of the copolymer **between** the adjacent layers.

As the standard for anticipation is one of strict identity and "the reference must teach every aspect of the claimed invention either explicitly or inherently." (MPEP section 706.02IV, lines 6 and 7) and the cited reference has failed to teach the claimed elements of the present claims, this reference is not and cannot be an anticipatory reference. As such, the rejection based on 35 USC 102(b) is respectfully requested to be withdrawn as it fails to provide a reference which contains all of the

claimed elements of the present claims and therefore no basis for rejection under 35 USC 102 has been properly made.

Claims 1, 2, 5-8 and 10 have been rejected under 35 USC 103(a) over Rogemont (US 4,701,234) in view of the GB reference. Applicants disagree.

The office action states that Rogemont fails to teach or suggest a thermoplastic elastomer but that the GB reference does and that it would have been obvious to substitute the EVA copolymer of the GB reference for the raw, cured in place silicone of Rogemount. Applicants disagree.

The office action's position is based upon the disclosure in the GB reference that its EVA copolymer has low extractables and layers can be sealed together into one body using the material. The Office Action fails to consider the clear teaching that the EVA layer of the GB reference is used between layers of the device and it uses its good adhesive properties to bond the layers together or that Rogemount uses raw silicone and then uses compression and heat to cause the raw material to penetrate the mesh and then polymerize.

What teaching is present to motivate one skilled in the art to use the EVA material of the GB reference in the process of Rogemount? The skilled artisan would have to ignore the teachings of the GB disclosure regarding the placement of the EVA between the layers and using its excellent adhesion properties to hold the layers together, focus only on the EVA material itself, and somehow arrive at the conclusion that it could be compressed under pressure and heat as taught by Rogemount to fill the mesh of Rogemount. EVA is a thermoplastic (Applicants contest whether it is a thermoplastic elastomer as claimed in the present invention and the Office Action fails to supply any evidence to that effect) and it would be solid until melted. However in the Rogemount process the heat used to polymerize the raw silicone would cause the EVA copolymer to melt and flow in

uncontrollable ways and not form the seal between the layers as it had in the GB reference. One of ordinary skill in the art would not have been suggested or motivated to use the GB EVA in the Rogemount process as suggested in the present office action.

As stated by the Federal Circuit in *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1986), "One cannot use hindsight reconstruction to pick and choose from isolated disclosures in the prior art to deprecate the claimed invention."

Of similar import is *In re Wesslau*, 147 U.S.P.Q. 391, 393 (CCPA 1965):

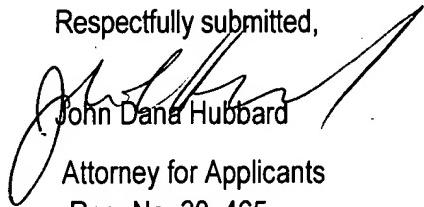
"It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art." (Emphasis added).

The combination of the two references would not have led to the claimed invention. At best the cited combination would have led to the use of the polymerizable thermoset silicone of Rogemont in the device of the GB reference or the use of the EVA layer between the various layers, relying on the "excellent adhesion" of the EVA to bond the layers together rather than the molding and heating of Rogemount. However that is not the presently claimed invention. As such, it is believed the *prima facie* case of obviousness has been rebutted and the rejection should be withdrawn.

Appl 09/937,114
Amdt dated March 15, 2007
Reply to Office Action of September 25, 2006

Reconsideration and allowance are respectfully requested in view of the foregoing amendment and remarks.

Respectfully submitted,



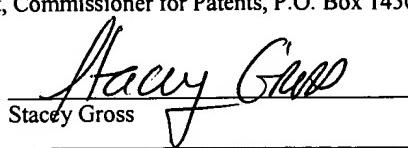
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